

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3334 of 2006

Smt. Radhabai Jagannath Gokhale & anr. Petitioners

Vs.

Abhinav Sahakari Griha Rachana
Sanstha Maryadit, Pune & ors.

Respondents

Mr.A.V.Anturkar with Mr.S.B. Deshmukh for
petitioners.

CORAM: B.H.MARLAPALLE,J.

July 18, 2006.

P.C.

1. Heard Mr.Anturkar, the learned counsel for the
petitioners who are aggrieved by the judgment and
order of the Maharashtra State Co-operative Appellate
Court passed on 10/3/2006 allowing Appeal No.181 of
2005 and thereby setting aside the award passed by
the Co-operative Court No.2 at Pune in Dispute No.98
of 1990 on 1/9/2005.

2. I had raised a preliminary point regarding the
maintainability of this petition under Article 227 of
the Constitution when a remedy of civil revision
application under Section 115 of the Code of Civil
Procedure, 1908 is available against the impugned
judgment of the lower Appellate Court established

under the Maharashtra Co-operative Societies Act, 1960 ("the Act" for short) and Mr. Anturkar, the learned counsel while supporting that a civil revision application is a statutory remedy available against the impugned judgment has placed before me some decisions of the Supreme Court as well as this Court and urged that a detailed and reasoned order is required to be passed.

3. The petitioners herein had moved Dispute No.98 of 1990 under Section 81 of the Act before the Co-operative Court at Pune and the same was allowed by declaring that the respondent no.2 has no right or concern with the suit property (Plot No.39 of Abhinav Sahakari Griha Rachana Sanstha Maryadit, Padmavati, Pune) and the respondent no.2 was, therefore, ordered and directed to quit and vacate and hand over the vacant and peaceful possession of the said plot to the disputants i.e. the petitioners. This award was challenged by filing an appeal before the Maharashtra Co-operative Appellate Court under Section 149 of the Act. Sub-section 11 of Section 149 of the Act reads as under

"(11) An order passed in appeal, or in revision under sub-section (9), in review under section 150 by the Co-operative

Appellate Court, shall be final and conclusive, and shall be not called in question in any Civil or Revenue Court."

Therefore, it is necessary to consider whether the remedy of filing a civil revision application under Section 115 of the CPC is still available to the aggrieved party from a final decree passed by the Co-operative Appellate Court when there is no further appeal provided and such an order or decree shall be final and conclusive.

4. Section 115 of CPC reads as under:

"115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

. Provided that the High Court shall not, under this section, vary or reverse an order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is

stayed by the High Court.

Explanation-In this section, the expression, "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

5. It is no doubt well established that the Co-operative Courts as well as the Co-operative Appellate Courts are subordinate Courts to this High Court within the meaning of Article 235 of the Constitution in as much as the Labour Courts and the Industrial Courts all over the State of Maharashtra are the subordinate Courts to this High Court. The Supreme Court in the case of *Shyam Sunder Agarwal & Co. v. Union of India* [(1996) 2 SCC 132] by referring to its earlier decision in the case of *Hari Shankar v. Rao Girdhari Lal Chowdhury* [AIR 1963 SC 698] stated in paras 26 and 28 as under

"26. In our view, a revisional application before the High Court against an appellate order passed under Section 39 of the Arbitration Act is maintainable. There is no express provision in the Arbitration Act

putting an embargo against filing a revisional application against appellate order under Section 39 of the Act. The Arbitration Act has put an embargo on filing any second appeal from appellate order under Section 39 of the Act. The Arbitration Act is a special statute having limited application relating to matters governed by the said Act. Such special statute, therefore, must have its application as provided for in the said statute. The revisional jurisdiction of the High Court under the Code or under any other statute therefore shall not stand superseded under the Arbitration Act if the Act does not contain any express bar against exercise of revisional power by the High Court provided exercise of such revisional power does not mitigate against giving effect to the provisions of the Arbitration Act.

28. It may be stated that even if a special statute expressly attaches finality to an appellate order passed under that statute, it has been held by this Court in the case of Hari Shankar that such provision of finality

will not take away revisional powers of the High Court under Section 115 of the Code of Civil Procedure. There is also no such express provision in the Arbitration Act attaching finality to the appellate order under Section 39 of the said Act...."

. In the case of ITI Ltd. v. Siemens Public Communications Network Ltd. [(2002) 5 SCC 510] it was sought to be argued that the conclusions drawn by the Supreme Court in case of Nirma Ltd. [(2002) 5 SCC 520] were erroneously founded on relying upon the earlier judgment in the case of Shyam Sunder Agarwal (Supra) and this argument was repelled by the Supreme Court.

6. It is generally a view expressed that the proviso added below sub-section 115 is the heart and soul of the said section and revision can be maintained only when the tests laid down in the said proviso are satisfied. However, this belief is fallacious and the proviso operates only in respect of an interlocutory order and not a final decree. We may in this regard usefully refer to a Division Bench

decision of this Court in the case of Chandu Jagannath Ambekar v. Digambar Kisanrao Kulkarni [2004 (4) Mh.L.J. 69 (D.B.)] and also an order passed in Civil Revision Application No.164 of 2005 on 31st March 2006 wherein an objection was raised against entertaining a civil revision application under Section 115 of CPC against a decree passed under Section 6 of the Specific Relief Act. A Single Judge of this Court (A.M.Khanwilkar, J.) considered a number of decisions of the High Courts as well as that of the Supreme Court and while rejecting the preliminary objection on entertaining a civil revision application instead of a writ petition noted thus:

"Sub-section (1) read with sub-section (2) of Section 115 of the Code is very wide. It not only takes within its sweep the order passed by the subordinate court in proceedings which are still pending before it but also a decree in a suit disposing of the suit finally. The limitation to entertain the revision application however, is that, no appeal lies against the said order or decree and the parameters provided in (a) to (c) of section

(1) will have to be observed...."

In the case of Shiv Shakti Co-op. Housing Society, Nagpur **[AIR 2003 SC 2434]**, the ambit of the amended Section 115 of CPC has been considered and the scope of the proviso below sub-section (1) of the said Section has been clarified.

7. It is thus clear that even if a special statute like the Act gives finality to the Appellate Court's final order or decree and there is no further appeal provided therein, the remedy of civil revision application under Section 115 of the CPC still remains in-tact and the proviso below sub-section (1) of Section 115 of the CPC does not come in the way to entertain such a revision. In the case of *Sadhana Lodh v. National Insurance Co. Ltd.* **[AIR 2003 SC 1561]** a three-Judge Bench while dealing with the maintainability of a writ petition under Article 227 of the Constitution against the remedy of filing a civil revision application under Section 115 of CPC has held thus:

"... Where a statutory right to file an appeal has been provided for, it is not open

to High Court to entertain a petition under Art. 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution...."

8. In view of the above said position in law,

this petition under Article 227 of the Constitution cannot be entertained when the petitioners have an alternative remedy of filing a civil revision application under Section 115 of the CPC against the impugned decree of the lower Appellate Court and hence the petition is allowed to be withdrawn with liberty to file a civil revision application. Should there be an issue of limitation while entertaining a civil revision application, the period during which

this petition was pending will have to be excluded
consideration.

(B.H.MARLAPALLE,J.)